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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

THE CITY AND COUNTY OF SAN  
FRANCISCO, CALIFORNIA and THE  
PEOPLE OF THE STATE OF  
CALIFORNIA, Acting by and through San  
Francisco City Attorney DENNIS J.  
HERRERA,

Plaintiffs,

v.

PURDUE PHARMA L.P., et al.

Defendants.

Case No. 3:18-cv-07591-CRB-JSC

**JOINT STATUS UPDATE**

**Judges:** Hon. Charles R. Breyer and Jacqueline  
Scott Corley

**Courtroom:** Via Videoconference

**Hearing Date:** July 21, 2021

**Hearing Time:** 8:30 a.m.

The parties respectfully submit this Joint Status Update in advance of the Court's discovery conference scheduled for July 21, 2021 at 8:30 a.m.

# **I. JOINT STATEMENT REGARDING SCHEDULE AND DISPUTE RESOLUTION**

The parties jointly report on a number of case developments that have taken place since the last conference with the Court.

## **A. Case Schedule**

On June 15, the Court entered the parties' joint stipulation and proposed order to modify the case schedule. Doc. 572. The specific dates are reflected in the chart below:

<b>Event</b>	<b>Current Schedule</b>
Custodial Productions Substantial Completion Deadline	June 4, 2021
Document Production Substantial Completion Deadline	June 21, 2021
Plaintiff's Expert Reports	October 5, 2021
Close of Fact Discovery	November 12, 2021
Defendants' Expert Reports	December 2, 2021
Plaintiff's Expert Rebuttal Reports	December 23, 2021
Close of Expert Discovery	January 14, 2022
Motions for Summary Judgment and <i>Daubert</i> Motions	January 24, 2022
Oppositions to Motions for Summary Judgment and <i>Daubert</i> Motions	February 25, 2022
Replies in Support of Motions for Summary Judgment and <i>Daubert</i> Motions	March 11, 2022
All Trial Materials Due	March 24, 2022
Final Pretrial Conference	April 4, 2022
Trial	April 25, 2022

## **A. Update on Status of Settlement Among Stipulating Parties (Docs. 518-19, 562, 564, 570, 586)**

On January 26, 2021, the Court stayed the proceedings as to the Stipulating Defendants.<sup>1</sup> On June 11, the Stipulating Parties filed a Third Joint Notice Regarding Update on Status of Settlement, suggesting they provide a further update to the Court on August 9. Doc. 570. The

<sup>1</sup> The Stipulating Defendants are distributors McKesson Corporation, AmerisourceBergen Drug Corporation and Cardinal Health, Inc.; and manufacturer Johnson & Johnson, its subsidiary Janssen Pharmaceuticals Inc. f/k/a Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. and its former affiliate Noramco, Inc. (with Plaintiff, the "Stipulating Parties").

1 Court ordered the Stipulating Parties to provide an update on the status of the settlement on  
2 August 9. Doc. 586.

3 **B. Discovery Orders Issued Since Prior Conference (Docs. 578, 592)**

4 Following the last status conference, the Court issued two discovery orders. In the first,  
5 the Court set deadlines regarding Walgreens' due diligence records; ordered that Plaintiff and  
6 Walgreens submit a status update to the Court by June 30, 2021 regarding their progress; and  
7 ordered Plaintiff to provide Walgreens with an updated Red Flag analysis on or before June 30,  
8 2021. Doc. 578. The Court also ordered that Endo submit an update to the Court by June 30,  
9 2021 regarding the status of its investigation into data and other information potentially  
10 responsive to Plaintiff's Interrogatory Nos. 1-4 and the expected date of completion. *Id.* In the  
11 second discovery order, after reviewing the Parties' respective status reports of June 30, 2021  
12 (Docs. 589, 590), the Court ordered Plaintiff and Walgreens to provide an update on their  
13 progress in linking the due diligence records to Plaintiff's Red Flag analysis data, and ordered  
14 Walgreens to complete production of its due diligence records by August 16, 2021 to include  
15 500 hardcopy prescriptions from 2010. Doc. 592. The Court also ordered Endo to complete its  
16 investigation of the Commercial Data Warehouse and the StayinFront CRM database and  
17 database backups and produce any responsive materials discovered therein by July 21, 2021. *Id.*

18 **C. Discovery Motions**

19 There are no fully briefed discovery disputes before the Court. However, Defendants  
20 filed a motion for an order governing production of medical and prescription insurance claims  
21 information, which Plaintiff did not oppose. Doc. 598. The Court granted the motion and  
22 entered the order on July 20. Doc. 600.

23 **II. PLAINTIFF'S STATEMENT**

24 **A. Plaintiff Productions**

25 Plaintiff provided its updated Red Flag analysis to Walgreens on June 30, 2021, pursuant  
26 to this Court's order. Walgreens' statement to the contrary is simply not true. On June 6, nearly  
27 a week after Plaintiff produced the updated Red Flag analysis, Walgreens confirmed that they  
28 had "loaded Plaintiff's red flag file and developed the random sample code." Walgreens'

counsel also asked if Plaintiff would break down the analysis into “yearly files,” which Plaintiff did. But Walgreens’ belated response and request for the data in a different format in no way excuses Walgreens from meeting the Court-imposed deadline for producing due diligence files, as Walgreens suggests below.

Plaintiff has also produced millions of pages of custodial and non-custodial documents in this litigation and disputes Defendants’ assertion below that those productions are deficient. Plaintiff also disagrees with Defendants’ inaccurate characterizations of Plaintiff’s dispensing data but continues to meet and confer with Defendants to answer their questions.<sup>2</sup>

**B. Defendants’ Discovery Deficiencies and Other Issues Requiring the Court’s Attention**

Plaintiff has addressed Defendants’ discovery deficiencies in past status reports and will not repeat them all here. But a select few, including several that have become evident only recently, require emphasis.

**1. Walgreens**

The Court ordered Walgreens to produce “500 hardcopy prescriptions per year from the same 12 stores dating back to 2010.” Doc. 578. Notwithstanding the Order’s plain language, Walgreens previously refused to produce more than 250 prescriptions for the years 2010 and 2020. Plaintiff was willing to accept 250 for 2020 because Walgreens produced dispensing data for only half of that year. Plaintiff was unwilling to accept fewer than the 500 Court-ordered hard copies for 2010. The parties flagged the disagreement in a status report (Doc. 589), after which the Court again confirmed that Walgreens was to produce “500 hardcopy prescriptions from 2010” (Doc. 592). Now, Walgreens refuses to produce *any* hard copy prescriptions for 2020, which again violates the Court’s orders.

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<sup>2</sup> Particularly perplexing is Walgreens’ assertion that it first learned about Methasoft during the deposition of Michelle Geier on July 12. During a June 7 meet and confer, Plaintiff (again) explained that federally regulated narcotics treatment program—like the Opiate Treatment Outpatient Program (“OTOP”)—are governed by 42 C.F.R., Part 2, and that the drugs administered through those programs are documented in a segregated record keeping system. Methasoft is the trade name for that system, and Plaintiff has produced more than 1,700 documents referring to it.

1 Separately, Plaintiff and Walgreens have met and conferred for two months about what  
 2 Plaintiff believes are significant deficiencies in Walgreens' custodial productions. Plaintiff  
 3 intends to initiate the discovery dispute briefing process shortly to address unresolved issues,  
 4 and Walgreens' characterization of the meet and confer is inaccurate. The parties are also  
 5 meeting and conferring about a discrete set of non-custodial document requests, including  
 6 requests related to employee misconduct, Plaintiff's challenges to certain entries in Walgreens'  
 7 privilege logs, and a pending request to inspect Walgreens' pharmacy computer system.<sup>3</sup>

## 8 **2. Allergan and Teva**

9 On June 25, Plaintiff sent a letter to Teva seeking, *inter alia*, additional information  
 10 regarding the number of opioids sold by the Teva Defendants that entered San Francisco. The  
 11 parties met and conferred on July 19, and Teva has agreed to supplement on various issues and  
 12 to continue investigating others. On July 8, Plaintiff sent a letter to Allergan regarding similar  
 13 issues, including the same request regarding the number of its opioids that entered San  
 14 Francisco, but has yet to receive a response.

## 15 **3. Endo/Par**

### 16 *Missing Data Issues Related to Interrogatory Nos. 1-4.*

17 On July 2, 2021, this Court ordered that Endo must complete its investigation of and  
 18 produce all responsive materials from the Commercial Data Warehouse ("CDW"), the  
 19 StayinFront CRM database, and database backups by July 21, 2021. Doc. 592. Plaintiff has  
 20 received or is expecting productions from the four following data sources:

- 21 • **Call Data with Message Description and Message Names Located in Endo's**  
 22 **CDW ("CDW\_ADS Calls with Messages").** In Endo's June 30, 2021, Status  
 23 Report, it stated that it anticipated producing data "during the week of July 5,  
 24 2021." On July 16, 2021, Endo produced data from this source, which Plaintiff  
 25 is in the process of evaluating.

26 <sup>3</sup> Just thirty minutes before this statement was due to be filed, Walgreens inserted new (and from  
 27 Plaintiff's perspective, inaccurate) arguments regarding methadone, the Community Behavioral  
 28 Health Services pharmacy (which does *not* dispense any responsive opioids), as well as this  
 Court's prior due diligence orders. Plaintiff does not have time to respond to all of Walgreens'  
 improper, 11<sup>th</sup> hour additions.

- 1           • **Additional Fields of Call Data from 2008 to 2012 Entered from Endo’s**

2           **StayinFront Customer Relationship Management (“CRM”) Database**

3           **(“SIF2008-2012”).** Endo first disclosed the existence of this database, located

4           within Endo’s computer environment, during the parties’ June 30, 2021, Zoom

5           conference. In Endo’s June 30, 2021, Status Report, Endo stated that it

6           anticipated producing this data “during the week of July 12, 2021.” On July 16,

7           2021, Endo produced data from this source, which Plaintiff is in the process of

8           evaluating. Endo has not yet provided a satisfactory explanation for why

9           SIF2008-2012 was not previously identified and searched here, or in any other

10          opioid action prior to June 2021, however. Indeed, it is evident from the parties’

11          discussions that the data could just as easily have been extracted and searched at

12          the outset of the litigation.
- 13          • **Call Data Provided to Endo’s Lidoderm Discovery Vendor (Celerity)**

14          **(“SIF2007 Backup”).** On June 15, 2021, Endo indicated that additional call

15          data may have been collected by a discovery vendor in connection with a 2008-

16          2009 Lidoderm investigation. On July 7, 2021, Endo confirmed that this data

17          source does, indeed, contain responsive non-duplicative data. During the parties’

18          July 14, 2021, Zoom conference, Endo represented that this data would “likely”

19          be produced on July 21, 2021, in compliance with this Court’s July 2, 2021,

20          Order.
- 21          • **Provider Data Located on the SIF Database (“SIF Provider Data”).** During

22          the parties’ July 14, 2021, Zoom conference, Endo disclosed for the first time

23          that it has located additional data regarding prescribers and “excluded products.”

24          Endo has not provided an anticipated date of production.

25           On July 19, 2021, Endo advised Plaintiff for the first time that it had located missing

26           “materials dropped information associated with calls between 1/2/2013 and 10/24/2014.”

27           However, Endo has not yet located missing materials dropped data from October 24, 2011, to

28           January 2, 2013, or October 24, 2014, to June 8, 2015, as Plaintiff requested. Endo has not

provided any explanation for the outstanding gaps in the Materials Dropped File or why the data it is just now producing in June 2021 was not previously identified. Endo represents it will produce the materials dropped data found by July 21, 2021.

### **C. Plaintiff Depositions**

Plaintiff and the Endo Defendants will likely seek Court intervention on the upcoming deposition of Tracey Norton. Norton worked for one of the Endo Defendants' subsidiaries from 2011 to 2014, and in early 2019 was deposed about her time there. Plaintiff now seeks to depose Norton regarding her work for the Allergan/Actavis Defendants from 2002 through 2009. Plaintiff and the Endo Defendants dispute the proper scope of the deposition, specifically under what circumstances Plaintiff may also examine Norton about her time at Endo. The parties have met and conferred and expect to submit papers in the near future.

## **III. DEFENDANTS' STATEMENT**

### **A. Status of Party Discovery**

#### **1. Defendants' Discovery Requests**

In advance of the Court's February 26, 2021 deadline for substantial completion of document productions, Plaintiff identified 30 custodial email productions as substantially complete. On April 12, 2021, Plaintiff represented it had substantially completed email production of eight additional custodians. On April 16, Plaintiff notified Defendants that its email production for one additional custodian was substantially complete. On May 18, Plaintiff informed Defendants that around one quarter of its non-email custodial files had not been completely produced. On June 4, Plaintiff produced an additional 52,123 documents totaling 694,201 pages, from 40 individual custodians and 18 non-custodial sources. On June 17, Plaintiff represented it was producing an additional 16,314 documents totaling 168,200 pages,<sup>4</sup> and on June 29, Plaintiff produced an additional 20,392 documents totaling 99,239 pages. Defendants are still evaluating these productions, but have discovered what appear to be deficiencies in Plaintiff's overall document production for various time periods, custodians, and

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<sup>4</sup> This production was not made on June 17. Defendants actually received this production on July 8.

1 non-custodial sources. Defendants have raised these issues with Plaintiff, and the parties will  
2 meet and confer to attempt to resolve the issues without this Court's intervention.

3 Following the Court's April 15, 2021 Order for Plaintiff to produce Crime Data  
4 Warehouse ("CDW") narratives (Doc. 530), Plaintiff made multiple productions of CDW  
5 documents, which were complete on June 10. On June 17, following review of those  
6 productions, Defendants followed up to narrow their prior requests for police department  
7 investigation files in response to Defendants' discovery requests to a small percentage of  
8 incidents listed in the CDW for which Plaintiff produced the CDW incident reports. Plaintiff has  
9 informed Defendants that it will agree to produce the investigation files associated with these  
10 incidents (to the extent such files exist) on a rolling basis, but has not yet committed to a  
11 timeframe in which it will complete this production. Defendants request that the Court order a  
12 deadline of August 27, 2021 for Plaintiff to complete this production of investigation files.

13 Defendants have also enquired about equivalent databases for incident reports from the  
14 San Francisco Sheriff's Department, but as of the date of this status report, have not heard back  
15 from Plaintiff.

16 Defendants are also evaluating the sufficiency of Plaintiff's other productions, and have  
17 identified additional apparent deficiencies in Plaintiff's dispensing data, including as informed  
18 by testimony from the recent depositions of Dr. Michelle Fouts, the Director of Pharmacy at  
19 Plaintiff's Laguna Honda Hospital, and Dr. Michelle Geier, a Psychiatric Clinical Pharmacist  
20 Supervisor at San Francisco's Community Behavioral Health Services ("CBHS") pharmacy.  
21 Amongst other issues, Plaintiff did not produce methadone data or benzodiazepine data from  
22 CBHS, despite the fact that those medications are subject to the parties' agreement regarding  
23 dispensing data. Indeed, during Dr. Geier's deposition, she disclosed that Plaintiff keeps and  
24 maintains methadone data on a separate system called "Methasoft," which includes many of the  
25 same data fields the parties long ago agreed to produce. That was news to Defendants. Plaintiff  
26 has not argued that producing any of this data would be burdensome.<sup>5</sup> On July 16, Defendants  
27 also submitted privilege challenges to Plaintiff.

28 <sup>5</sup> Just moments before this status report was due, Plaintiff provided additional revisions, asserting



Defendants are continuing to evaluate the extent of the deficiencies, but have identified the issues they are aware of for Plaintiff, and the parties are meeting and conferring and hope to resolve the issues without this Court's intervention. Defendants are moving forward as quickly as they can in pursuing depositions, but continue to be hamstrung by Plaintiff's ongoing delays in producing the requisite documents and data Defendants need in order to do so.

## 2. Plaintiff's Discovery Requests

Defendants have produced millions of documents in the MDL, which are deemed produced in this case. In addition, Defendants have made additional productions specific to this case.

In advance of the last status conference, **Walgreens** completed its custodial productions, resulting in a production of approximately 50,000 custodial documents, on top of the more than 380,000 documents Walgreens has produced in the MDL. On May 17, Walgreens completed its production of hard copy refusals to fill and Target Drug Good Faith Dispensing checklists resulting in a total hard copy production of over 35,000 documents and over 135,000 pages.<sup>6</sup> Walgreens substantially completed its production of documents responsive to Plaintiff's new set of RFPs on July 16, and is continuing to meet and confer with Plaintiff on other items. On July 8, in response to Plaintiff's requests, Walgreens made an offer to Plaintiff on new custodians and offered to meet and confer with Plaintiff. Plaintiff rejected the meet and confer and stated it would initiate the discovery dispute process, but Walgreens has not seen that briefing. In subsequent conversations, Plaintiff indicated it may be willing to work out a compromise with Walgreens. Walgreens awaits Plaintiff's position. Walgreens sent responses to Plaintiff's privilege challenges on July 16.

On July 9, Walgreens produced unredacted hard copy due diligence records as well as an overlay for its dispensing data enabling Plaintiff to link these records to the prescriptions in Walgreens' dispensing data. Walgreens also produced almost 15 million records relating

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that Walgreens had "inserted many other inaccuracies" into the status report. Those statements are both unexplained and untrue. Walgreens also objects to Plaintiff's complaint about late additions to the status report, as Plaintiff routinely (including in this instance) makes last minute changes to these reports.

<sup>6</sup> Walgreens has also updated its Interrogatory responses several times at Plaintiff's request.

1 toelectronic pharmacist notes and other due diligence. Walgreens estimates that production  
 2 constitutes about one-third of its overall electronic notes/due diligence production, and anticipates  
 3 completing that electronic production by the Court's August 16 deadline. Walgreens' production  
 4 of notes associated with hard copy prescriptions, however, has been delayed by Plaintiff's failure  
 5 to provide the discrete prescriptions it flagged in its "red flag analysis" for the 12 relevant stores  
 6 until July 13, almost two weeks after the Court's June 30 deadline.<sup>7</sup> Once Walgreens received  
 7 these prescriptions, it immediately ran the sample and began the lengthy process of tracking down  
 8 these prescriptions. Given Plaintiff's delay and the burden inherent to this production, Walgreens  
 9 is unable to determine at this time whether it will be able to meet this Court's August 16 deadline  
 10 for production. But Walgreens is producing 5,000 prescriptions, from 2010-19, as ordered by this  
 11 Court, as quickly as it can. Walgreens will provide additional updates to Plaintiff and this Court  
 12 as it determines where the 5,000 prescriptions are all stored, and whether it will be able to meet  
 13 the August 16 deadline.<sup>8</sup>

14 The **Endo** and **Par** Defendants have produced over 5.4 million documents, including  
 15 over 232,000 documents in this matter specifically. Consistent with the Court's Order dated July  
 16 2, 2021 (Doc. 592), by July 21, 2021, Endo will complete its investigation of Endo's  
 17 Commercial Data Warehouse, the SIF2008-2012 database, and the SIF2007 Backup (in each  
 18 case as defined in the June 30, 2021 Status Report (Doc. 590)) for any additional data  
 19 responsive to Plaintiff's Interrogatory Nos. 1-4, and produce any such data. Specifically, Endo  
 20 has or by July 21, 2021 will produce:

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23 <sup>7</sup> Plaintiff's assertion above that it provided its "red flag" analysis on June 30 ignores the fact that  
 24 Walgreens repeatedly had to request corrections to that analysis before Walgreens could create  
 25 the sample of hard copy prescriptions to collect. Plaintiff initially provided a file that included **all**  
 26 prescriptions from the 12 stores, not just the prescriptions that Plaintiff had "flagged." Walgreens  
 did not have a final analysis from which to draw a sample of "flagged" prescriptions until almost  
 two weeks after the Court's deadline. Since that time, Walgreens has been working diligently to  
 collect sampled hard copy prescriptions from more than a dozen stores and off-site facilities.

27 <sup>8</sup> Plaintiff's assertion that the Court ordered Walgreens to produce 5,500 hard copy prescriptions  
 is incorrect. *See* 6/16/21 Court Tr. 30:23-24 ("THE COURT: I think that's – that's ten years.  
 28 That's 5,000 prescriptions." In any event, Walgreens does not believe it would be able to  
 complete a production of 5,500 hard copy prescriptions by August 16, nor is such an increase  
 proportional to the needs of this case.

- 1 • Call Data containing available information in “message description”, “message  
2 name”, and “reaction description” fields located in and extracted from Endo’s  
3 Commercial Data Warehouse;
- 4 • Call Data containing additional fields of data for the period 2008 to 2012  
5 (inclusive) entered into Endo’s former StayinFront customer relationship  
6 management (“CRM”) database (“SIF2008-2012”)<sup>9</sup>;
- 7 • Call Data from a 2007 backup of its StayinFront CRM database (“SIF2007  
8 Backup”) that was located on media maintained by a former eDiscovery vendor  
9 Endo used in a prior government investigation involving Lidoderm (“Lidoderm  
10 Vendor Media”);<sup>10</sup>
- 11 • Materials dropped information associated with calls between 1/2/2013 and  
12 10/24/2014.<sup>11</sup>

13 **Allergan** has deemed produced in this case 724,488 documents and 5,145,819 pages  
14 gathered and produced—without geographic limitation—in other opioid cases. It has also  
15 agreed to provide its production in the MDL regarding suspicious order monitoring-related  
16 documents. In late January and early February, Allergan agreed to conduct several additional  
17

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18 <sup>9</sup> Plaintiff asserts that “Endo has not yet provided a satisfactory explanation for why SIF2008-  
19 2012 was not previously identified and searched.” In fact, Endo provided an explanation to  
20 Plaintiff in a July 13, 2021 letter. In any event, discovery remains open, no Endo depositions  
21 have been taken, and Endo is now producing the above data.

22 <sup>10</sup> During the parties’ July 14, 2021 Zoom status update conference, counsel for Endo informed  
23 Plaintiff that in the course of Endo’s investigation to locate additional information responsive to  
24 Interrogatory Nos. 1-4 in various data sources, Endo located information related to HCPs in a  
25 field present in SIF2008-2012, which is not responsive to Interrogatory Nos. 1-4. Endo expects  
26 to produce this additional data after July 21, 2021 to the extent it is relevant and responsive to  
27 Plaintiff’s discovery requests.

28 <sup>11</sup> On Monday, July 19, 2021, Endo confirmed that it located materials dropped information  
associated with calls between 1/2/2013 and 10/24/2014. Endo located this information in a  
legacy SQL environment that contains data from Endo’s Veeva/Atlas Customer Relationship  
Management system. Endo is preparing this materials dropped information for production and  
expects to produce this information on Wednesday, July 21, 2021. Endo has conducted an  
exhaustive investigation of the Endo Commercial Data Warehouse in its effort to locate materials  
dropped data for the remainder of the time period raised by Plaintiff as missing information in  
previous productions. Endo has not located additional materials dropped data other than what is  
described above and what it previously produced. It is possible that in the future, Endo will  
locate additional data points that will allow Endo to perform additional SQL searches of the Endo  
Commercial Data Warehouse, and in such event, Endo will perform such searches.

1 searches for this case in particular at Plaintiff's request. On February 26, 2021, Allergan  
 2 produced an additional 47,984 documents, including 190,209 pages, which includes the results  
 3 of several of those searches. On March 13, 2021, Allergan made another substantial additional  
 4 production. On March 24, 2021, Allergan produced additional chargeback and rebate data as  
 5 well as its privilege log. Allergan's production is substantially complete.

6 The **Teva** Defendants have produced over 3.2 million documents available to Plaintiff,  
 7 and have completed the production of documents for the additional agreed regional custodians.

8 **B. Status of Other Third-Party Discovery**

9 The California Department of Justice ("CA DOJ") produced its CURES data on April  
 10 28. On May 14, DOJ made a supplemental production of CURES data correcting issues  
 11 identified by Walgreens. Walgreens recently notified Plaintiff and the CA DOJ that it intends to  
 12 seek re-identification of certain prescribers, including all of Plaintiff's prescribers, contained in  
 13 the CURES data that CA DOJ produced. The parties and CA DOJ met and conferred about this  
 14 issue on July 14. CA DOJ indicated it was not willing to identify Plaintiff's prescribers in the  
 15 CURES data, even if notice was properly provided, because of its "other" outstanding  
 16 objections. The parties asked whether CA DOJ would agree to provide an overlay for the  
 17 CURES data flagging which prescribers are employed by Plaintiff, but not actually identifying  
 18 them, in order to help Walgreens limit the number of names it ultimately must seek for  
 19 identification. CA DOJ is considering the issue.

20 In April 2020, Defendants served requests for production on Plaintiff for the production  
 21 of documents and data from all pertinent subdivisions of the City and County of San Francisco.  
 22 When the City and County was dismissed as a plaintiff, Plaintiff took the position that certain of  
 23 its subdivisions were not within Plaintiff's custody and control, requiring third-party subpoenas.  
 24 Defendants therefore served subpoenas on the San Francisco departments and entities that  
 25 Plaintiff has deemed outside of its custody and control, including the Department of the  
 26 Environment, Department of Emergency Management, Board of Supervisors, Controller's  
 27 Office, Mayor's Office, District Attorney's Office, Department of Human Resources, Health  
 28

1 Service System, and Human Services Agency.<sup>12</sup> These subdivisions have responded to the  
 2 subpoenas, and the parties are in the process of meeting and conferring regarding those  
 3 responses. The parties will submit disputes to the Court as necessary.

4 Defendants are also pursuing third-party discovery from various state agencies, law  
 5 enforcement entities, and third-party pharmacies, and have subpoenaed the Medical Board of  
 6 California, the Dental Board of California, the California Board of Registered Nursing, and the  
 7 United States Drug Enforcement Administration. Certain of the third-party law enforcement  
 8 agencies (represented by one of the firms also representing Plaintiff) have objected to the  
 9 subpoenas, including on the basis that their municipality has an opioid-related case pending in  
 10 the MDL. Defendants dispute this objection, which cannot deprive Defendants of discovery  
 11 regarding geographic areas Plaintiff has put at issue in this case, and are meeting-and-conferring  
 12 with these agencies to attempt to resolve this issue without Court intervention. Defendants have  
 13 met and conferred with the Medical Board of California, the Dental Board of California, the  
 14 California Board of Registered Nursing, and the United States Drug Enforcement  
 15 Administration, and are negotiating the scope of their productions.

16  
 17 DATED: July 20, 2021

Respectfully submitted,

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28 <sup>12</sup> Defendants have also served subpoenas on the San Francisco Superior Court and the University  
 of California San Francisco Hospital.

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**ATTESTATION**

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from the above signatories.

Dated: July 20, 2021

By: /s/ Kevin R. Budner

**CERTIFICATE OF SERVICE**

I hereby certify that, on July 20, 2021, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

/s/ Kevin R. Budner  
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